

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JIMMY ELLIS CLARK,

Plaintiff,

v.

SUSAN HARNASH, TIM GRAY,
STEVE PARKER, WES McCART, and
DON DASHIELL,

Defendants.

No. 2:15-CV-0028-SMJ

ORDER DISMISSING CASE

Before the Court is Plaintiff Jimmy Ellis Clark's notice for removal. ECF No. 4. By separate Order, the Court granted Plaintiff leave to proceed *in forma pauperis*. ECF No. 3. Plaintiff, proceeding *pro se*, believes that removal of his state case is proper under 28 U.S.C. § 1441(b) and (e) and that the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because his claims arise under the Constitution. ECF No. 2 at 2. Plaintiff has not attached his complaint or any other pleading to the Notice of Removal. The Court now dismisses Plaintiff's case as a result various deficiencies.

Pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(iii), the Court must dismiss a case if the Court determines the action is "frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who

1 is immune from such relief.” *See Lopez v. Smith*, 203 F.3d 1122, 1126 n.7 (9th
2 Cir. 2000) (stating “section 1915(e) applies to all *in forma pauperis* complaints”).
3 Here, Plaintiff has not actually filed a complaint and, even with liberal
4 construction, the Notice of Removal does not suffice.

5 Federal Rule of Civil Procedure 3 establishes that “a civil action is
6 commenced by filing a complaint with the court.” Fed. R. Civ. P. 3. A complaint
7 must state a claim for relief, which includes “a short and plain statement of the
8 claim showing that the pleader is entitled to relief” and “a demand for the relief
9 sought.” Fed. R. Civ. P. 8(a). Plaintiff’s Notice of Removal does not contain a
10 statement showing that Plaintiff is entitled to relief. Nor does it contain a demand
11 for the relief sought. This means that Plaintiff has made no legally cognizable
12 claim and that dismissal is proper for failure to state a claim.

13 Further, the Court does not find that giving Plaintiff an opportunity to file
14 his state court complaint and other related documents would be appropriate. By
15 relevant statute, a civil action “may be removed by the defendant or defendants.”
16 28 U.S.C. § 1441(a). Nowhere in the United States Code is there any express or
17 implied authorization of removal by plaintiffs. Indeed, the Supreme Court has
18 held that the language of the removal statute indicates Congress’s intent to
19 authorize removal by defendants only. *Shamrock Oil & Gas Corp. v. Sheets*, 313
20 U.S. 100, 104–07 (1941). And so, the Court is disinclined to grant Plaintiff leave

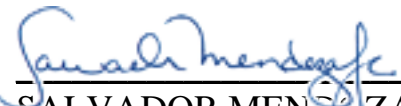
1 to file his state court complaint. Because removal by Plaintiff is impermissible, the
2 case would still suffer from a fatal defect even if the filing of Plaintiff's complaint
3 cured his failure to state a claim.

4 Accordingly, **IT IS HEREBY ORDERED:**

- 5 **1.** All claims are **DISMISSED WITHOUT PREJUDICE** with all
6 parties to bear their own costs and attorneys' fees.
- 7 **2.** The Clerk's Office is **DIRECTED** to enter judgment in favor of
8 Defendants.
- 9 **3.** All pending motions are **DENIED AS MOOT**.
- 10 **4.** All hearings and other deadlines are **STRICKEN**.
- 11 **5.** The Clerk's Office is directed to **CLOSE** this file.

12 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order
13 and provide copies to counsel and to Plaintiff.

14 **DATED** this 8th day of May 2015.

15 
16 SALVADOR MENDEZ, JR.
17 United States District Judge
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